

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **04 -MSRC- 018**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

vs. **FINAL ORDER REGARDING CORBETT HOWELL**

CORBETT HOWELL, CORBITT DARREN HOWELL,
THOMAS A. BAKER, THOMAS L. CARROLL &
ANTHONY BAKER

RESPONDENTS

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Office of Mine Safety and Licensing (OMSL) and Respondent Corbett Howell, and the members of the Commission having reviewed the Settlement Agreement filed on April 25, 2005 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if reproduced herein in full as a material part of this **FINAL ORDER**. A copy is attached hereto;
3. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.

4. This Final Order shall be considered to constitute a “subsequent offense” as defined by 805 KAR 8:010, Section 1(13);
5. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
6. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 26TH day of May 2005.



MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 27th day of May 2005:

CORBETT HOWELL
P.O. BOX 327
WAYLAND KY 41666-0327
Respondent

And by messenger mail to:

HON. TONY OPPEGARD
GENERAL COUNSEL
OFFICE OF MINE SAFETY & LICENSING
1025 CAPITAL CENTER DRIVE
FRANKFORT KY 40601

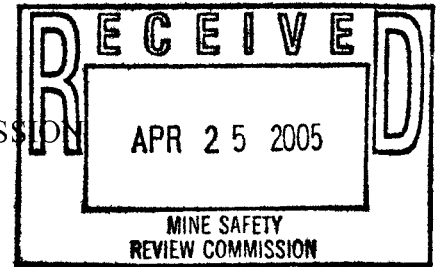
And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601

A handwritten signature in cursive script, reading "Bryon Alan Thompson", is written over a horizontal line.

Bryon Alan Thompson
General Counsel
Mine Safety Review Commission

KENTUCKY MINE SAFETY REVIEW COMMISSION



KY. OFFICE OF MINE SAFETY & LICENSING)

Complainant)

v.)

Admin. Action No. 04-MSRC-018

CORBETT HOWELL, CORBETT DARREN)

HOWELL, THOMAS A. BAKER, THOMAS L.)

CARROLL & ANTHONY BAKER)

Respondents)

SETTLEMENT AGREEMENT BETWEEN OMSL & CORBETT HOWELL

Come the Complainant, the Kentucky Office of Mine Safety & Licensing ("OMSL"), and Respondent Corbett Howell ("Howell"),¹ and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the settlement of this action against him² and the cancellation of the trial that is currently scheduled for July 14, 2005, Howell hereby admits the existence of the conditions set forth in paragraphs 9 (a) - (i) of OMSL's Complaint and agrees to the following:

1. The **SUSPENSION OF HIS UNDERGROUND MINE FOREMAN'S CERTIFICATE (# A-218-90) FOR A PERIOD OF AT LEAST SIX (6) MONTHS, EFFECTIVE UPON THE SIGNING OF THIS SETTLEMENT AGREEMENT BY BOTH**

¹ Howell is the lone remaining Respondent in this proceeding. The Mine Safety Review Commission ("the Commission") previously approved OMSL's settlement agreements with the other four Respondents.

² OMSL and Howell will file a joint motion with the Commission to approve the Settlement Agreement and dismiss this action. Said approval is at the discretion of the Commission.

PARTIES. Howell shall surrender his underground foreman's certificate to OMSL immediately, and he shall not be allowed to perform any duties which require the possession of a valid underground mine foreman's certificate until his certificate is reinstated.

2. Howell's underground mine foreman's certificate shall remain suspended **UNTIL HOWELL HAS TAKEN EIGHT (8) HOURS OF SPECIAL SAFETY TRAINING FROM OMSL'S MARTIN DISTRICT OFFICE,**³ **THEN RE-TAKEN AND PASSED THE KENTUCKY UNDERGROUND MINE FOREMAN'S EXAMINATION.** Said special safety training must be taken within sixty (60) days of the effective date of this settlement Agreement.

3. **IF HOWELL DOES NOT PASS THE UNDERGROUND MINE FOREMAN'S EXAMINATION WITHIN THE 6-MONTH SUSPENSION PERIOD, HIS FOREMAN'S CERTIFICATE WILL REMAIN INDEFINITELY SUSPENDED UNTIL HE PASSES THE EXAMINATION.** If and when Howell passes the underground mine foreman's examination and the 6-month suspension period has expired, his foreman's certificate (# A-218-90) will be automatically reinstated. That is, Howell will not be required to request reinstatement of his certificate through the Kentucky Mining Board.⁴

4. **IF AND WHEN HOWELL'S UNDERGROUND MINE FOREMAN'S CERTIFICATE IS REINSTATED, IT SHALL IMMEDIATELY BE PLACED ON**

³ Said special safety training is in addition to any annual refresher training or other safety training that Howell is legally required to take.

⁴ If and when the 6-month suspension period has expired and Howell passes the underground mine foreman's examination, his foreman's certificate will be returned to him by OMSL upon request.

PROBATION FOR A PERIOD OF ONE (1) YEAR.

5. The **PROBATION OF HIS UNDERGROUND MINER'S CERTIFICATE**
(#) **FOR A PERIOD OF AT EIGHTEEN (18) MONTHS, EFFECTIVE UPON**
THE SIGNING OF THIS SETTLEMENT AGREEMENT BY BOTH PARTIES.

6. During the probationary periods referred to in paragraphs 4 and 5 herein, Howell shall comply with all state and federal mine safety laws and regulations. The willful violation by Howell of any of said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke his underground mine foreman's certificate and/or his underground miner's certificate for the remainder of the probationary period regarding said certificate(s).⁵

7. This Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will constitute a "subsequent offense", as that term is defined at 805 KAR 8:010, Section 1 (13). Specifically, this is Howell's second (2nd) offense before the Commission.

Howell understands and agrees that he has had the opportunity to retain an attorney to represent him in this matter, but that he has chosen to represent himself. Howell further states that he has carefully read this Settlement Agreement (or that the Settlement Agreement has been read to him), that he has carefully considered the Agreement prior to signing it, and that he understands and agrees to its terms and provisions.

OMSL and Howell acknowledge and agree that there are no other promises,

⁵ If the circumstances warranted, OMSL would also retain the right to file a separate action with the Commission seeking other penalties against Howell for his actions. In either event, Howell would have the right to a hearing before the Commission on the allegations against him.

inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

Corbett Howell

CORBETT HOWELL
P.O. Box 327
Wayland, Kentucky 41656

H-19-25

Paris L. Charles 4/25/05

PARIS L. CHARLES
Executive Director
Ky. Office of Mine Safety & Licensing
P.O. Box 2244
Frankfort, Kentucky 40602

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Settlement Agreement Between OMSL & Corbett Howell was mailed this 25TH day of April, 2005, to Corbett Howell, P.O. Box 235, Wayland, Kentucky 41666.

Tony Oppegard

TONY OPPEGARD
General Counsel

KY. OFFICE OF MINE SAFETY & LICENSING